

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Case No. 13297US01)

IN THE APPLICATION OF:

Wilfrid LeBlanc

Electronically Filed on July 25, 2011

SERIAL NO.: 10/077,405

FILED: February 15, 2002

FOR: JITTER BUFFER AND LOST-
FRAME-RECOVERY
INTERWORKING

ART UNIT: 2616

EXAMINER: Warner Wong

Conf. No.: 4140

REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appellant request a rehearing with respect to the Decision on Appeal for the matter identified above that was mailed June 23, 2011 (the “Decision”). This Request is timely because it is being filed within two months of that date.

The Appellant requests a rehearing because the Decision seemingly misapprehends that “adjusting a duration of the time period” is NOT “a change in the playout rate” as taught by Agrawal. The Decision summarily affirms the Examiner’s rejection based on this point.

Page 4 of the Decision correctly identifies that a “rate” is calculated as “a measured amount divided by a fixed time period (kb/s i.e., kilobits per second).” However, the Decision incorrectly applies the calculation of rate to the terms in the claims. The Decision states, “a change in the time period for playout (adjusting the deadline) is a change in the playout rate because it changes the measured amount over that fixed time period.”

To apply the rate calculation to “playout,” the Decision must be able to show a measured amount of data elements and a fixed time period over which those data elements are played out.

First of all, the playout rate attributed to exemplary independent claim 1 by the Decision fails to account for a fixed time period over which data elements are played out. The time period in exemplary independent claim 1 is NOT “for playout” as the Decision assumes, the time period in exemplary independent claim 1 is prior to playout, (i.e. the data element is held “until the end of the time period, at which time the data element is released for playout”). Since the time period in exemplary independent claim 1 is prior to playout, a rate that the Decision assumes is calculated from this time period is not the playout rate of Agrawal. Therefore, neither the Examiner’s Answer, nor the Decision, provide any evidence that the time period in exemplary independent claim 1 is taught by the playout rate of Agrawal.

Secondly, the Decision’s allegation that “a change in the time period [e.g., ‘adjusting a duration of the time period’ per exemplary independent claim 1, part d] … changes the measured amount [e.g., of data elements] over that fixed time period” is completely contrary to the

language of exemplary independent claim 1 that states, “a time period [is] associated with each data element.” Since the time period in exemplary independent claim 1 is for each data element, the measured amount of data elements in the time period is unchanged and is always one. Therefore, neither the Examiner’s Answer, nor the Decision, provide any evidence that a change in the time period in exemplary independent claim 1 changes a measured amount over a fixed time period.

By analogy, assume that a data element is your car and “playout” is driving your car on a highway at the speed limit of 55 miles per hour. There is no direct relationship between the speed limit (Agrawal’s playout rate) and how long it takes you to get to the highway from your house (the time period in exemplary independent claim 1). You could take a different route or travel at a different speed to get to the highway. The time period prior to your car’s arrival at the highway does not change the highway’s speed limit or the number of other cars on the highway. Likewise, if the speed limit on the highway is raised to 60 miles per hour, there is no change in the distance from your house to the highway. The speed limit on the highway is not determined by the time it takes to get to the highway from your house – in the same way, Agrawal’s playout rate is not determined by the time period in exemplary independent claim 1.

The Appellant will show in the following illustrations that: 1) “adjusting a duration of the time period” per claim 1 may have no affect on the “playout rate;” and 2) “a change in the playout rate” may occur without “adjusting a duration of the time period” per claim 1.

Consider the illustration in Figure 1 of elements (a) and (b) in exemplary independent claim 1.

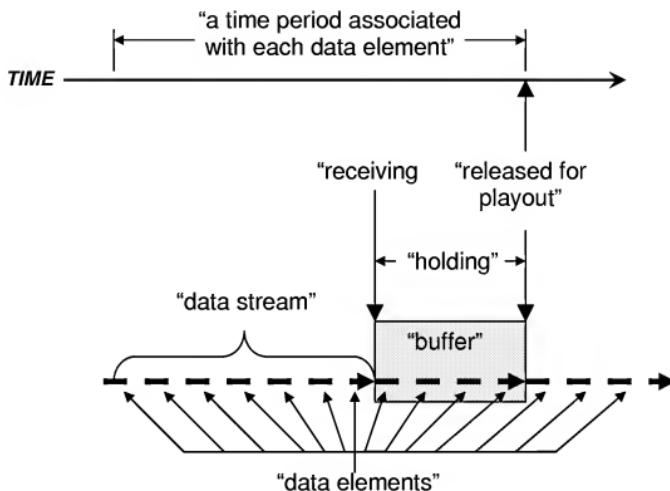


Figure 1.

1. A method of processing a transmitted digital media **data stream** comprising a stream of **data elements**, the method comprising steps of:
 - (a) **receiving** the data stream;
 - (b) **holding** each data element that is received prior to an end of **a time period associated with each data element** in a **buffer** until the end of the time period, at which time the data element is **released for playout**;
 - (c) monitoring a loss rate at which data elements in the data stream are not received by the end of their respective time periods; and
 - (d) adjusting a duration of the time period based upon the loss rate.

Consider the illustration in Figure 2 relative to Figure 1. By lengthening the buffer, for example, the “duration of the time period” may be adjusted per element (d) of claim 1. This change has NO necessary affect on the “playout rate” (i.e. the measured amount [of data elements being played out] divided by a fixed time period). This is illustrated by the different buffer times but same data element spacing in Figures 1 and 2.

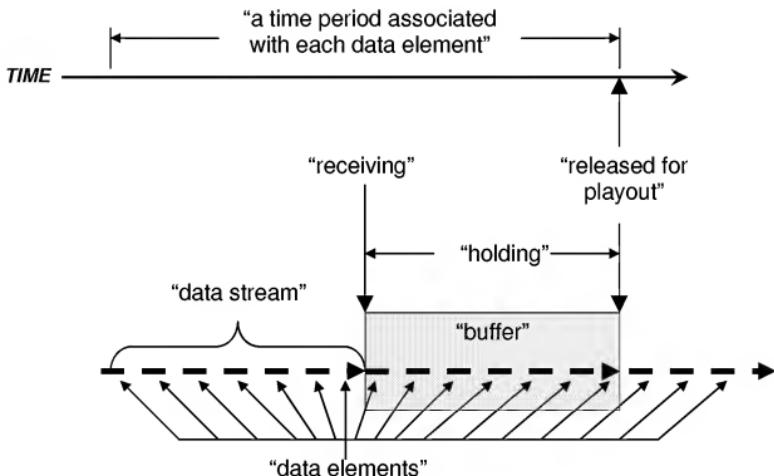


Figure 2. Longer “Time Period” - Same “Playout Rate”

Now consider the illustration in Figure 3 of elements (a) and (b) in exemplary independent claim 1. Relative to Figure 1, “a change in the playout rate” (i.e. the measured amount [of data elements being played out] divided by a fixed time period), as cited in the Decision, may occur if fewer data elements are played out during the same time (note the different data element spacing in Figure 3 relative to those in Figures 1 and 2). However, the “duration of the time period” is NOT necessarily adjusted per element (d) of claim 1.

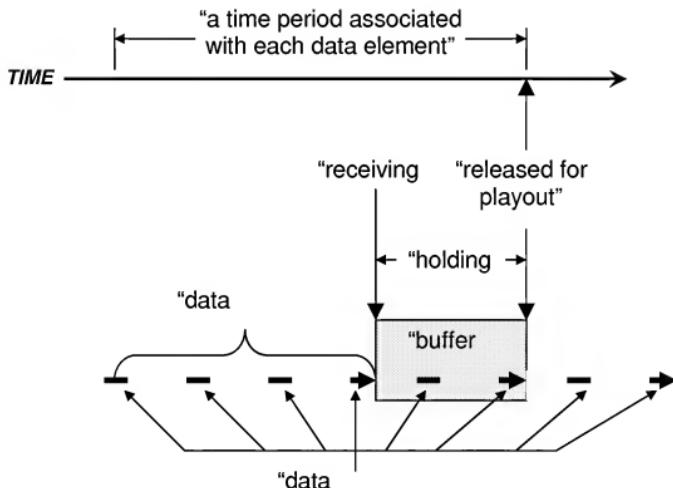


Figure 3. Same “Time period” - Slower “Playout Rate”

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As explained above, neither the Examiner's Answer, nor the Decision, provide any evidence that any of the cited references expressly or necessarily describe, teach, or suggest "adjusting a duration of the time period" in the context of exemplary independent claim 1. For at least these reasons, the Appellants respectfully request reconsideration of the rejection of independent claims 1, 12 and 23 and the claims depending therefrom.

IV. Conclusion

For at least the reasons discussed above, the Appellants respectfully submit that the Board overlooked or misapprehended that "adjusting a duration of the time period" in exemplary independent claim 1 is NOT "a change in the playout rate."

Therefore, the Appellants respectfully request that the rejection of claims 1-14, 18-25 and 27-33 be reversed.

The Commissioner is authorized to charge any necessary fees, or credit overpayment to Deposit Account 13-0017.

Respectfully submitted,

Dated: July 25, 2011

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